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September 6, 1996
(Justice)

The following is being distributed at the request of the Royal Newfoundland Constabulary Public Complaints Commission:

Published pursuant to Section 38 of the Royal Newfoundland Constabulary Act, 1992, by the Commissioner, Public Complaints Commission.

Mr. Brian Nolan filed a public complaint on July 29, 1993 against Cst. Larry Hickey, Cst. Krista Clarke, Cst. Glenn Barry and Cst. Lester Parsons of the Royal Newfoundland Constabulary. Mr. Nolan complained he was harassed by police as he was leaving a gay bar in downtown St. John's on the night of July 6, 1993. He complained he was wrongfully detained under the Detention of Intoxicated Persons Act and was physically and verbally assaulted.

The complaint was investigated in the first instance by the Internal Review Section of the RNC. The Chief of Police responded to Mr. Nolan by a letter dated October 18, 1993 indicating there was insufficient evidence to substantiate his allegations. He found that the officers saw Nolan outside a bar and made the determination that he was intoxicated to such a degree as to be a danger to himself and arrested him under provisions of the DIP Act. Mr. Nolan filed an appeal with this commission on October 20, 1993.

The appeal was assigned to an investigator who, upon completion of the investigation, submitted his report to the commissioner on November 30, 1993. The commissioner was unwilling to dismiss the complaint and confirm the decision of the chief and was unable to effect a settlement agreeable to all parties. On February 7, 1994, under authority of Section 28 of the RNC Act, the matter was referred to adjudicator David B. Eaton to conduct a hearing.

In a decision dated August 30, 1994 the adjudicator dismissed the allegations against Csts. Glen Barry and Lester Parsons and found the allegations against Constables Clarke with respect to derogatory remarks to be proven. He also found that Csts. Clarke and Hickey arrested Mr. Nolan without good and sufficient cause.

This decision by adjudicator D. Eaton was appealed by the officers, under Section 34 of the RNC Act, to the Trial Division of the Supreme Court and was heard in Supreme Court on March 26, 1996. On April 4, 1996 Mr. Justice Halley found that the findings of the adjudicator were based upon credible and reliable evidence, that the adjudicator had drawn the proper inferences from the facts, and, that his findings were clearly sustainable by the evidence presented at the hearing.

In his final decision the adjudicator found that Csts. Hickey and Clarke should be treated equally on the charge of improper detention of Mr. Nolan. He found "...they made assumptions rather than inquiries, where inquiries were warranted. This, coupled with their lack of understanding or lack of concern for the requirements of the Detention of Intoxicated Persons Act (DIP Act), resulted in Mr. Nolan being unnecessarily detained and locked up for the night." To this charge he found a five day suspension for both officers appropriate.

With respect to the charge of the use of derogatory language against Cst. Clarke, the adjudicator, found it unacceptable that a police officer use such language towards a member of the public. "Because of the unbalance of power, the person to whom the language is directed has no real choice but to make no reaction at the time. It must be dealt with later if anything is to be done." To this

charge, the adjudicator ordered that Cst. Clarke be suspended without pay for a further two days.

Contact: Lorraine Roche, (709) 729-0950.

NOTE TO EDITORS: A copy of the adjudicator's decision is available by contacting the Royal Newfoundland Constabulary Public Complaints Commission at 729-0950.

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12:50 p.m.



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